

United States
Circuit Court of Appeals
For the Ninth Circuit

FRED STEBLER,

Appellant

vs.

PORTERVILLE CITRUS ASSOCIA-
TION,

Appellee

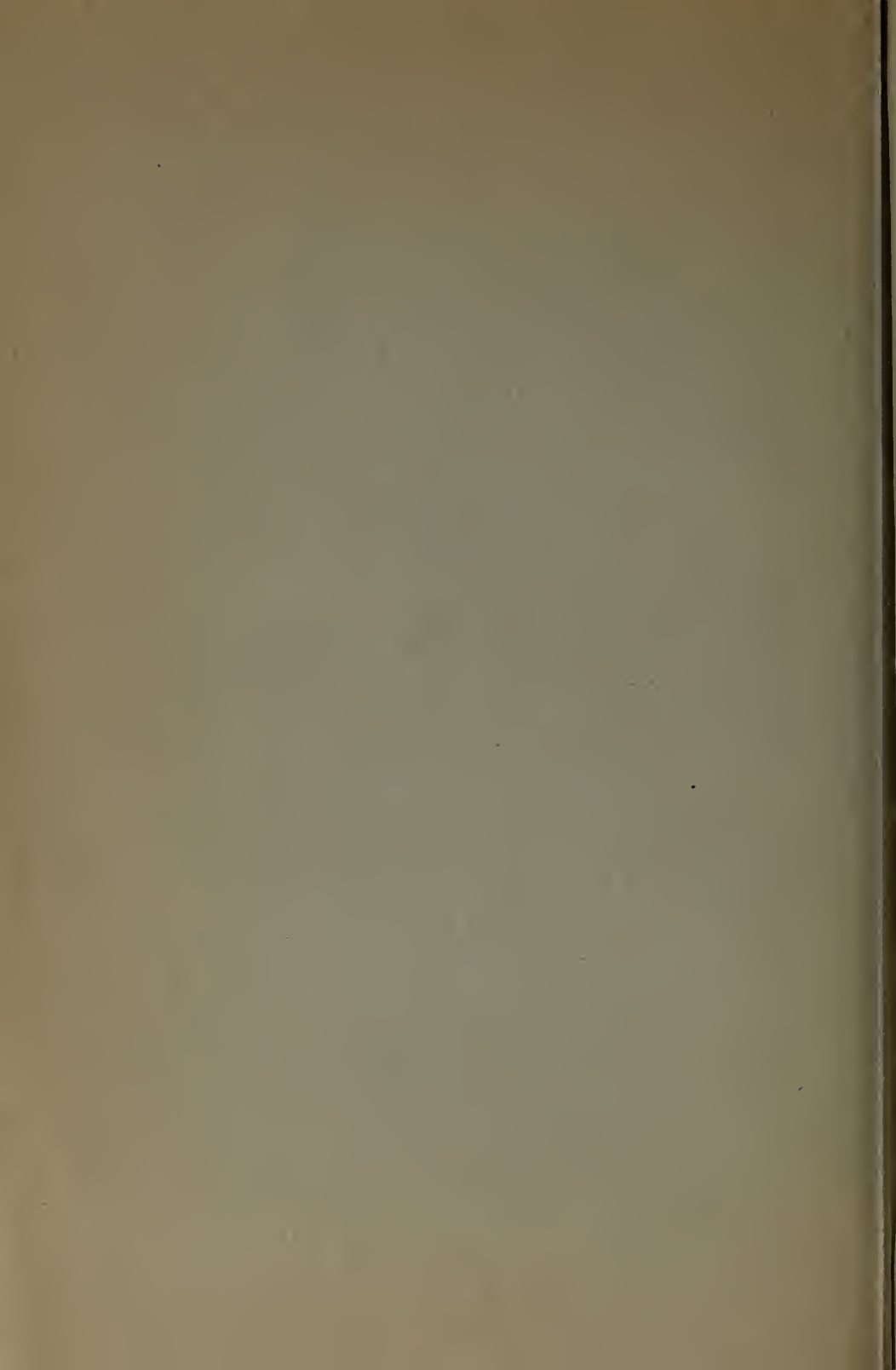
Transcript of Record

Upon Appeal from the United States District Court
for the Southern District of California,
Northern Division

Filed

SEP 25 1917

F. D. Monckton,
Clerk.



No. _____

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Circuit Court of Appeals
For the Ninth Circuit

FRED STEBLER,

Appellant

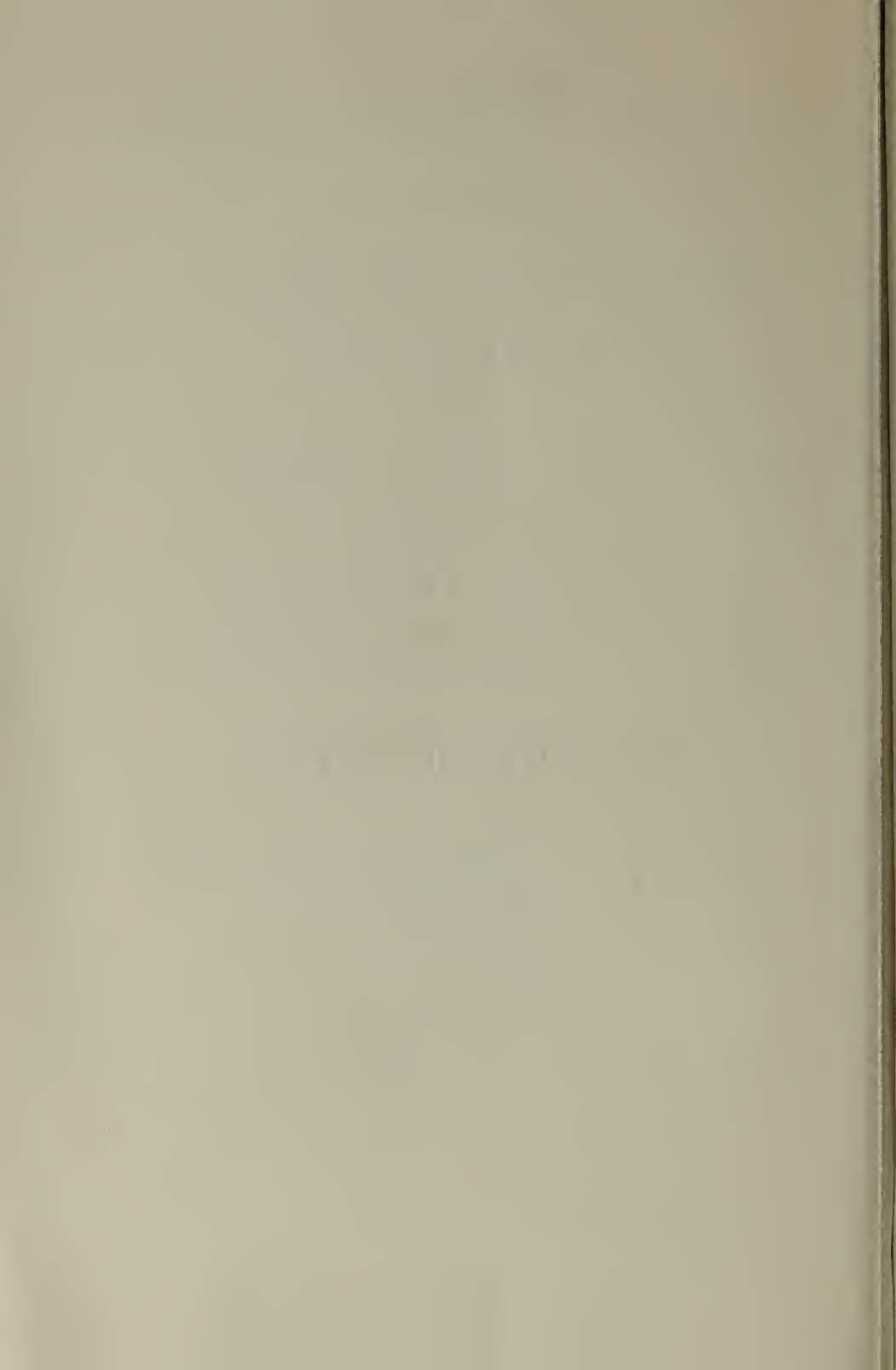
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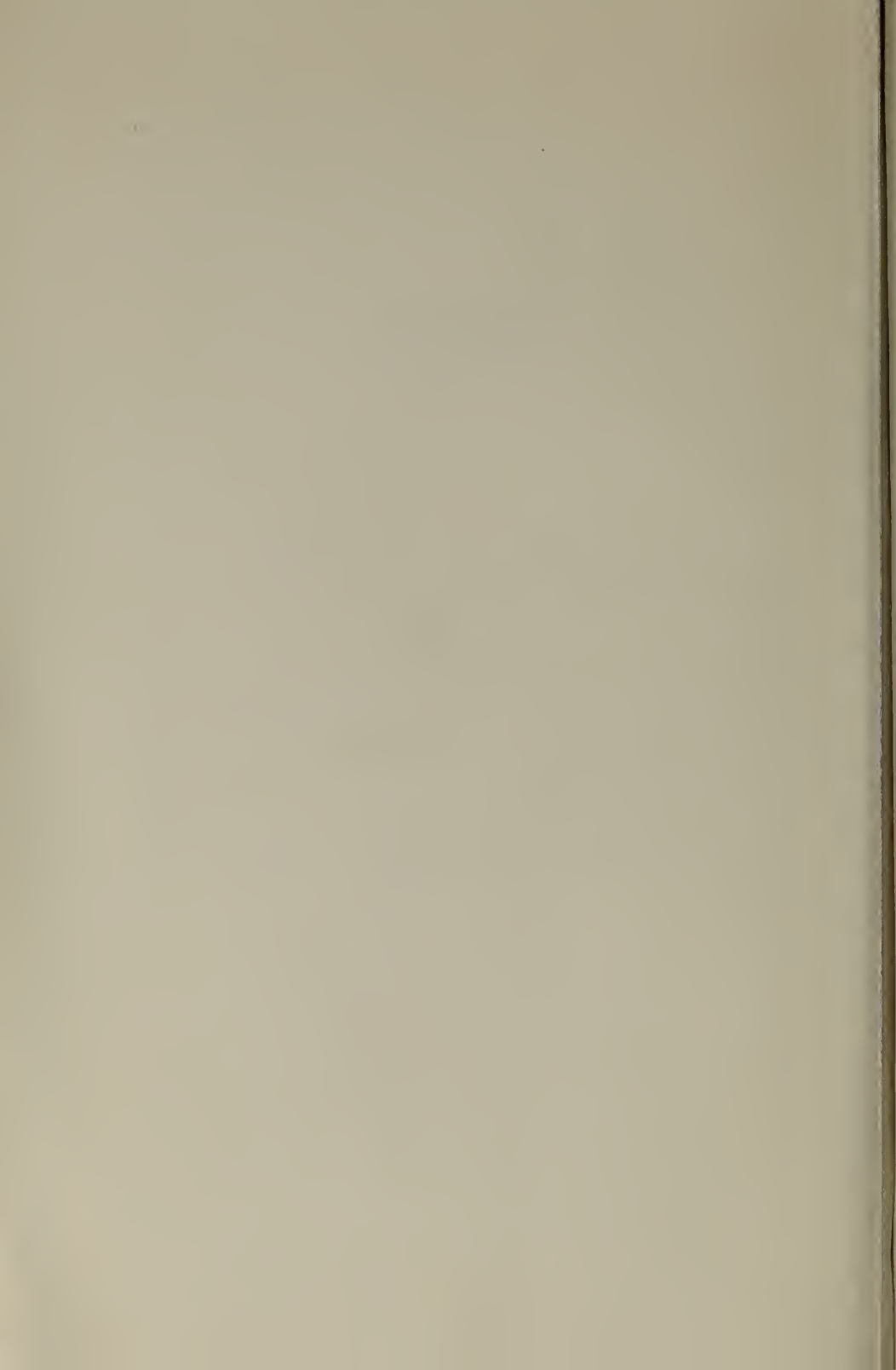
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United States District Court, Southern District of California, Northern Division.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

IN EQUITY—BILL OF COMPLAINT

COMES NOW Fred Stebler, a resident and citizen of the city of Riverside, state of California, and for his Bill of Complaint against Porterville Citrus Association, defendant, alleges:

I.

That defendant is now and during all the times hereinafter mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of California and has and had its principal place of business at Porterville, in the county of Tulare, state of California.

II.

That heretofore and prior to January 12, 1903, one Thomas Strain of Fullerton, California, was the original, first and sole inventor of a certain new and useful Fruit Grader. That on November 15, 1904, Letters Patent of the United States of America, numbered 775,015, were

4 duly and regularly granted, issued and delivered by the government of the United States of America to the said Thomas Strain for the said invention whereby there was granted and secured to the said Thomas Strain, his heirs, legal representatives and assigns, for the full term of seventeen (17) years from and after the 15th day of November, 1904, the full and exclusive right, liberty and privilege of making, using and vending to others to be used the said invention throughout the United States of America and the territories thereof. That said Letters
5 Patent were duly issued in due form of law under the seal of the United States Patent Office and duly signed by the Commissioner of Patents, all as will more fully and at large appear from the said original Letters Patent or a duly certified copy thereof ready in court to be produced as may be required.

III.

That heretofore, to-wit: on March 15, 1912, the said
6 Thomas Strain, by an instrument in writing, duly executed by him, and by him delivered to one E. J. Marks, of Fullerton, California, duly assigned, transferred, and set over unto the said E. J. Marks, his heirs and assigns, the full and exclusive right, title and interest in and to the said invention and Letters Patent No. 775,015, together with all rights of action, claims, or demands of whatever nature arising out of or accruing therefrom, including all claims for past infringement thereon, which said assignment was duly recorded in the United States Patent Office on April 1st, 1912, in liber K-89, page 139

7 of Transfers of Patents, all as will more fully and at
large appear from said original assignment, or a duly
certified copy thereof, ready to be used in court as may
be required; that heretofore, to-wit: on March 15th,
1912, said E. J. Marks, by an instrument in writing, duly
executed by him, and by him delivered to one Fred Steb-
ler, of Riverside, California, duly assigned, transferred
and set over unto the said Fred Stebler, his heirs and
assigns, the full and exclusive right, title and interest
in and to the said invention and Letters Patent No. 775,-
8 015, together with all rights of action, claims, or de-
mands of whatever nature, arising out of, or accruing
therefrom, including all claims for past infringement
thereon, which said assignment was duly recorded in the
United States Patent Office on April 1st, 1912, in Liber
K-89, page 138 of Transfers of Patents. That ever since
said March 15, 1912, plaintiff has been and is now the
sole and exclusive owner of the said full and exclusive
right, title and interest in and to said Letters Patent and
9 all rights and privileges thereby granted and secured.

IV.

That said invention so set forth, described and
claimed in and by said Letters Patent No. 775,015 is of
great value and that since the grant, issuance and de-
livery of the said Letters Patent, the public, users and
manufacturers of such machinery, and the trade in gen-
eral, have acquiesced in and acknowledged the rights of
the said Thomas Strain and of plaintiff as the successor
in interest of the said Thomas Strain, in, under, and to

- 10 the said invention and Letters Patent, and the exclusive rights thereby granted and secured and have generally respected the same, and save and except for the infringement thereon by defendant, plaintiff and his predecessor in interest, Thomas Strain, have had and enjoyed the exclusive right, liberty and privileges since November 15th, 1904, of manufacturing, selling and using machines embodying and containing the said invention described in, set forth by, and claimed in said Letters Patent No. 775,015, and but for the wrongful and infringing acts of
- 11 defendant, plaintiff would now continue to enjoy the said exclusive rights and the same would be of great and incalculable benefit and advantage to plaintiff; that said defendant has been notified in writing of the grant, issuance and delivery of said Letters Patent and of the rights of plaintiff thereunder, and has had full knowledge of plaintiff's rights under said Letters Patent, and demand has been made upon defendant to respect said Letters Patent, and not to infringe thereon, but not-
- 12 withstanding such notice, defendant has continued to make, use and sell Fruit Graders embodying and containing said invention, and intends and threatens to continue so to do, unless restrained and prohibited by this court, that all Fruit Graders embodying said invention of said Letters Patent No. 775,015, manufactured or used or sold by plaintiff or his predecessor in interest, have been plainly marked in a conspicuous manner with the word "Patented" together with the day and date of issuance of said Letters Patent, to-wit: November 15, 1904.

13

V.

That notwithstanding the premises, but well knowing the same, without the license or consent of plaintiff and in infringement and violation of said Letters Patent, the defendant herein, Porterville Citrus Association, has, within the year last past, and in the Southern District of California, Northern Division, at the city of Porterville, state of California, contracted to be made and caused to be made, and is now using and intends to continue to

14 use and cause to be made, machines or Fruit Graders embodying, containing and embracing the said invention described in and claimed by said Letters Patent No. 775,-015 and has infringed upon the exclusive rights secured to plaintiff by virtue of said Letters Patent. That the said machines so contracted or caused to be made, are now being used by defendant and each contains the said patented invention; that defendant is, as plaintiff is informed and verily believes, realizing large profits, gains and advantages from the use of each of said infringing
15 machines, the exact amount of which profits is unknown to plaintiff, and plaintiff prays discovery thereof; that by reason of the said infringement plaintiff is suffering great and irreparable damage and injury.

To the end therefore that the said defendant, Porterville Citrus Association may, if it can, show why plaintiff should not have the relief herein prayed and to the best and utmost of its knowledge, information and belief, full true and direct and perfect answer make to all and singular the premises, matters and things here-

- 16 inbefore set forth and alleged, plaintiff prays that defendant, its officers, attorneys, agents, servants, employes, workmen and associates, each and every thereof, be restrained both provisionally and perpetually from further infringing upon said Letters Patent and from making, using or selling or causing to be made, used or sold any Fruit Grader capable of being used in infringement of the said Letters Patent and that defendant be decreed to account for and pay over to plaintiff all gains and profits realized by it from and by reason of the infringement aforesaid and be decreed to account for and pay unto plaintiff the damages suffered by plaintiff by reason of said infringement, together with the costs of this suit, and for such further, other or different relief as equity and good conscience shall require.
- 17

FRED STEBLER,
FREDERICK S. LYON,
Solicitor and of Counsel for Plaintiff.

- 18 STATE OF CALIFORNIA, }
County of Riverside, } ss.

FRED STEBLER, being first duly sworn, on oath says: that he is the plaintiff named in the foregoing Bill of Complaint; that he has read said Bill of Complaint and knows the contents thereof and the same is true of his own knowledge, except as to such matters stated on information and belief and as to such matters he believes the same to be true.

(Notarial Seal)

FRED STEBLER.

19 Subscribed and sworn to before me this 11th day of
February, 1916.

M. J. TWOGOOD,
*Notary Public in and for the County of Riverside, State
of California.*

20

21

22 *In The United States District Court, Southern District
of California, Northern Division.*

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

In Equity

No. A.50

23

DEFENDANT'S ANSWER TO PLAINTIFF'S BILL
OF COMPLAINT

24 Now comes the defendant to the above-entitled suit
and for answer to the Bill of Complaint on file herein,
and more particularly to Paragraph 1 thereof, admits
that it is a corporation duly organized, created and exist-
ing under and by virtue of the laws of the State of Cali-
fornia and has its principal place of business at Por-
terville in the County of Tulare, State of California.

Answering Paragraph II of the Bill of Complaint
defendant denies that on or prior to the 12th day of
January, 1903, or at any other time, Thomas Strain,
referred to in said paragraph, was the original, first and
sole inventor of a certain new and useful FRUIT
GRADER; denies that on November 15, 1904, or at any
other time, Letters Patent of the United States of
America, No. 775,015, were duly and regularly granted,
issued and delivered by the government of the United

- 25 States of America to the said Thomas Strain for said alleged invention; denies that there was granted by said alleged Letters Patent, and secured thereby to the said Thomas Strain, his heirs, legal representatives and assigns for the full term of seventeen years, or for any other period from and after the 15th day of November, 1904, the full and exclusive right, liberty and privilege of making, using and vending to others to be used, said alleged invention throughout the United States of America and the territories thereof; denies that the said
- 26 Letters Patent were duly issued in due form of law under the seal of the United States Patent Office and duly signed by the Commissioner of Patents.

Answering Paragraph III of the said Bill of Complaint, defendant says that it is without knowledge as to the facts, or any of them, alleged in said Paragraph III and, therefore, and on that ground, denies the same and demands that plaintiff make strict proof thereof.

- Answering Paragraph IV of the said Bill of Com-
- 27 plaint, defendant denies that the alleged invention set forth, described and claimed in and by said alleged Letters Patent No. 775,015, is of great value, or of any value whatsoever; denies that since the grant, issuance and delivery of the said alleged Letters Patent, the public users and manufacturers of such machine, and the trade in general have acquiesced in and acknowledged the rights of the said Thomas Strain and of the plaintiff herein as the successor in interest of the said Thomas Strain, in, under and to the said alleged invention of the said alleged Letters Patent in suit herein; denies that any rights,

28 exclusive or otherwise, claimed to have been granted and secured to the plaintiff herein, have been generally respected and acquiesced in by the public; denies that save and except for the alleged infringement thereon by the defendant herein, the plaintiff and his predecessors in interest have had and enjoyed the exclusive rights, or any rights, liberties and privileges, since November 15, 1904, of manufacturing, selling and using machines embodying and containing the said alleged invention described in, set forth by and claimed in said
29 alleged Letters Patent No. 775,015; denies that but for the alleged wrongful and alleged infringing acts of this defendant, that the plaintiff herein would now continue to enjoy any alleged exclusive rights, or any rights whatsoever, under the alleged invention of the said alleged Letters Patent in suit; denies that any such alleged rights would be of great and incalculable benefit and advantage to the plaintiff herein, or of any advantage or benefit whatsoever; denies that it has been notified in writing of the grant, issuance and delivery of
30 said alleged Letters Patent and of the said alleged rights of the plaintiff herein thereunder; denies that it has had full knowledge of plaintiff's alleged rights under said alleged Letters Patent; denies that demand has been made upon defendant to respect said Letters Patent and not to infringe thereon; denies that notwithstanding any such alleged notice, it has continued to make, use and sell FRUIT GRADERS embodying and containing said alleged invention; denies that it intends and threatens to continue so to do and that it will continue so to do

31 unless restrained and prohibited by this court; denies that each and every FRUIT GRADER embodying the said alleged invention of said alleged Letters Patent No. 775,015, manufactured, or used, or sold by the plaintiff herein; or his predecessor in interest, have been plainly marked in a conspicuous manner, or in any manner whatsoever, with the word "PATENTED," together with the day and date of the issuance of the said alleged Letters Patent, to-wit, November 15, 1904.

32 Answering Paragraph V of the said Bill of Complaint, defendant denies that, without the license or consent of the plaintiff and in infringement and violation of said alleged Letters Patent, it has, within the last year, or within any time whatsoever, within the Southern District of California, Northern Division thereof, and at the City of Porterville, State of California, or at any other place or places, contracted to be made and caused to be made, and is now using and intends to continue to use and cause to be made, machines
32 or FRUIT GRADERS embodying, containing and embracing the said alleged invention described and claimed in and by said alleged Letters Patent No. 775,015, or that it has infringed upon the exclusive alleged rights, or any rights whatsoever, secured to plaintiff by virtue of said alleged Letters Patent; denies that the machines which it has contracted for or caused to be made, or which it is now using, contain the said alleged patented invention; denies that it has realized large profits or any profits, gains and advantages from the use of the said alleged infringing machines; and denies that by

34 reason of any alleged act of infringement complained of, the plaintiff is suffering or has suffered, great and irreparable damage and injury or any damage and injury.

And for a further and separate defense, defendant avers that the said Thomas Strain, mentioned in the patent in suit as the original, first and sole inventor of the thing patented, or attempted to be patented in and by said Letters Patent, was not such original, first and sole inventor, or any inventor thereof, but on the contrary, before the alleged invention or discovery thereof
 35 and for more than two years prior to his application for said Letters Patent, the thing patented or attempted to be patented in and by said Letters Patent, had been patented and described in various and sundry Letters Patent issued by the government of the United States to the following named persons on the following named dates and bearing the following names numbers:

	Name of Patentee	Date of Patent	No. of Patent
36	D. A. & A. B. Banker	February 10, 1874	147303
	W. O. Gunckel	August 7, 1883	282719
	Alfred Ayer	May 31, 1887	363974
	J. A. Jones	June 10, 1890	430031
	H. H. Hutchins	July 14, 1891	456092
	J. T. Ish	August 25, 1891	458422
	H. H. Hutchins	December 29, 1891	465856
	W. P. & H. Rice	August 31, 1897	589141
	M. P. Richards	July 24, 1900	654281
	H. B. Stevens	September 20, 1881	247428

37	A. Cerruti	February	26, 1895	534783
	C. D. Nelson	November	11, 1902	713484

And for a further and separate defense defendant denies that the said Thomas Strain was the original, first and sole inventor, or any inventor at all, of the thing sought to be patented in and by said alleged Letters Patent No. 775,015, or any material or substantial part thereof; and in this connection states that long prior to the supposed invention or discovery thereof by the said Thomas Strain, the same was known to and used by the following persons and corporations, viz: Howard B. Stevens, M. A. Rice, R. C. Douglas, J. C. Greener, A. S. Kells, H. M. Eichelberger, A. S. Lambert and J. W. Hagins, each of Citra, County of Marion, State of Florida; Thorndyke C. Jameson of Corona, County of Riverside, State of California; F. E. Proud of La Habra, State of California; used in the packing house of W. H. Jameson situated at Corona, County of Riverside, State of California; used in the packing house of M. A. Rice, situated at Citra in the County of Marion, State of Florida; and was known to various other persons and corporations whose names and addresses are at this time unknown to this defendant and cannot be stated at this time; but defendant prays leave of the Court to amend this answer by specifying the names of such parties as soon as the defendant ascertains the same.

And for a further and separate defense, defendant avers, upon its information and belief, that the Letters Patent in suit are wholly void and of no effect for the

40 reason that the state of the art existing at the time of the
alleged invention thereof by the said Thomas Strain was
such that it required only the exercise of mechanical skill
in producing the device purporting to be patented in and
by the alleged Letters Patent in suit, and that the pro-
duction of the same did not require the exercise of the
inventive faculty.

WHEREFORE, defendant having fully answered
the Bill of Complaint, prays to be dismissed with its
41 costs in this behalf most wrongfully sustained.

(Signed) PORTERVILLE CITRUS
ASSOCIATION

N. A. ACKER,
Attorney and Counsel for Defendant.

STATE OF CALIFORNIA, }
County of Tulare. } ss.

42 John A. Milligan, being first duly sworn on oath
says: That he is the Secretary of the defendant corpor-
ation in the above-entitled suit; that he has read the
foregoing answer to the plaintiff's Bill of Complaint
herein; that the same is true of his own knowledge
except as to such matters and things as are therein stated
on information and belief, and that as to the latter he
believes the same to be true.

(Signed) JOHN A. MILLIGAN.

Subscribed and sworn to before me this 4th day of
March, 1916.

43

(Signed) J. F. WRIGHT,

Notary Public in and for the County of Tulare,

(Seal)

State of California.

At a stated term, to-wit: the July Term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court Room thereof, in the City of Los Angeles, on Tuesday, the eleventh day of July, in the year of our Lord One Thousand Nine Hundred and Sixteen;

44

Present—The Honorable Oscar A. Trippet, District Judge.

FRED STEBLER,

Complainant,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

No. A 50

Equity.

45

This cause coming on this day for final hearing in open court, pursuant to stipulation of the parties and order heretofore entered herein; Frederick S. Lyon, Esq., appearing as counsel for complainant; N. A. Acker, Esq., appearing as counsel for defendant; A. S. Custer being present as shorthand reporter of proceedings, and acting as such; thereupon on motion and by consent, it is ordered that this cause be, and hereby is combined for final hearing with cause No. A 44 Equity, between the same parties.

46 *United States District Court, Southern District of California, Northern Division.*

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant

In Equity

No. A-50

47

DECREE

The above entitled suit, having come on regularly for hearing upon the evidence and proofs educed on behalf of the respective parties, Frederick S. Lyon, Esq., appearing on behalf of Plaintiff and N. A. Acker, Esq., on behalf of Defendant, now upon due consideration thereof, it is

ORDERED, ADJUDGED AND DECREED,

48 That Plaintiff's Bill of Complaint be and the same is hereby dismissed, and that defendant have and recover judgment against plaintiff for the sum of \$137.53, its costs and disbursements herein.

Dated Los Angeles, California, November 20, 1916.

TRIPPET

District Judge.

Decree entered and recorded November 20, 1916.

WM. M. VAN DYKE, *Clerk.*

By CHAS. N. WILLIAMS

Deputy Clerk

49 *United States District Court, Southern District of California, Northern Division.*

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

In Equity

No. A-50

50

PETITION FOR APPEAL

51 The plaintiff in the above entitled suit, conceiving himself aggrieved by the final decree made and entered by said Court in the above entitled suit on November 20th, 1916, dismissing plaintiff's Bill of Complaint, comes now by Frederick S. Lyon, Esq., his solicitor, and petitions said Court for an order allowing plaintiff an appeal from said decree to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also for an Order fixing the sum of security which plaintiff shall give and furnish upon such appeal.

FREDERICK S. LYON,

Solicitor for Plaintiff.

52 *United States District Court, Southern District of California, Northern Division.*

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

In Equity

No. A-50

53 In the above entitled suit, the plaintiff having filed his petition for an order allowing an appeal from the decree in this Court made and entered in this suit on Nov. 20th, 1916, dismissing plaintiff's Bill of Complaint, and having filed his Assignments of Error;

Now on motion of Frederick S. Lyon, Esq., Solicitor for Plaintiff, it is ordered that said appeal be and hereby is allowed to plaintiff to the United States Circuit Court of Appeals for the Ninth Circuit from the said
54 decree dismissing plaintiff's Bill of Complaint, and that the amount of plaintiff's bond on said appeal be and the same is hereby fixed in the sum of \$250.00.

It is further ordered that upon the filing of such security a certified transcript of the record and proceedings herein be forthwith transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit in accordance with the statutes and equity rules of the Supreme Court of the United States.

Dated May 4, 1917.

OSCAR A. TRIPPET,

District Judge.

55 *United States District Court, Southern District of California, Northern Division.*

FRED STEBLER,

Plaintiff.

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

No. A-50

56 ASSIGNMENTS OF ERROR

Comes now plaintiff above named, and specifies and assigns the following as the errors upon which he will rely on his appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree of November 20th, 1916, dismissing plaintiff's Bill of Complaint.

1. Error in not adjudging and decreeing that Thomas Strain was the original, first and sole inventor of the Fruit Grader described and claimed in Letters Patent No. 775,015, and that said Letters Patent are good and valid in law and plaintiff the owner thereof.

2. Error in not adjudging and decreeing that claims 1, 5, 7, 8, 9, 10, 11, 12, 13, 16, 18, 19, 24, 26, 31, 36 and 37 of Letters Patent No. 775,015 are and each of them is good and valid in law, and that the combined fruit graders and distributing apparatus used by defendant in its packing house at Porterville, California is an infringement of said claims and each thereof.

58 3. Error in not adjudging and decreeing that defendant be enjoined and restrained as in and by said Bill of Complaint prayed.

4. Error in not adjudging and decreeing that defendant account to and pay over to plaintiff the profits, gains and advantages received by or accruing to it from the use of said infringing machines.

59 5. Error in not adjudging and decreeing that plaintiff have judgment against defendant for plaintiff's damages arising from the use of said infringing machines by defendant.

6. Error in adjudging that defendant recover its costs and disbursements herein.

7. Error in not adjudging and decreeing that plaintiff have and recover of defendant his costs and disbursements herein.

In order that the foregoing assignments of error may be and appear of record, plaintiff presents the same to the Court and prays that such disposition may be
60 made thereof as is in accordance with the laws of the United States.

Wherefore said plaintiff prays that the decree in this suit made and entered on November 20th, 1916 be reversed and that the said Court be directed to enter an order setting aside said decree and ordering, adjudging and decreeing to plaintiff the relief against defendant prayed in said Bill of Complaint.

All of which is respectfully submitted.

FREDERICK S. LYON,
Solicitor for Plaintiff.

61 *United States District Court, Southern District of California, Northern Division.*

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

In Equity

No. A-50

62

BOND ON APPEAL.

63 KNOW ALL MEN BY THESE PRESENTS, that Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto Porterville Citrus Association, defendant in the above entitled suit, in the penal sum of Two Hundred and Fifty Dollars (\$250), to be paid to the said Porterville Citrus Association, its successors and assigns, for which payment, well and truly to be made, the Fidelity and Deposit Company of Maryland binds itself, its successors and assigns firmly by these presents.

Sealed with corporate seal and dated this 4th day of May, 1917.

The condition of the above obligation is such that whereas the said Fred Stebler, plaintiff in the above-entitled suit, is about to take an appeal to the United

64 States Circuit Court of Appeals for the Ninth Circuit, to reverse an order or decree made, rendered and entered on the 20th day of November, 1916, by the District Court of the United States, for the Southern District of California, Southern Division, in the above-entitled cause dismissing plaintiff's Bill of Complaint in said cause as in said decree set forth.

65 NOW, THEREFORE, the condition of the above obligations is such that if Fred Stebler shall prosecute his said appeal to effect and answer all costs which may be adjudged against him if he fail to make good his appeal, then this obligation shall be void; otherwise to remain in full force and effect.

FIDELITY AND DEPOSIT CO. OF MARYLAND.

By W. M. WALKER,

Attorney-in fact.

Attest A. W. FRANCISCO,

Agent.

66 STATE OF CALIFORNIA, }
County of Los Angeles, }^{ss.}

On this 4th day of May, 1917, before me, C. M. Evarts, a Notary Public in and for said county of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared W. M. Walker, known to me to be the attorney in Fact, and A. W. Francisco, known to me to be the Agent of the Fidelity and Deposit Company of Maryland, the corporation that executed the within instrument, and acknowledged to me that they subscribed the name of the Fi-

67 delity and Deposit Company of Maryland thereto and their own names as attorney in Fact and Agent respectively.

C. M. EVARTS,
*Notary Public in and for the County of Los Angeles,
State of California.*

The within bond and surety thereon is hereby approved this May 4, 1917.

TRIPPET,
District Judge.

68

69

